IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.187 OF 2006

M/s.Kena Dairy Products P.Ltd. ...Petitioner
vs.
Bank of India & Anr. ...Respondents

Mr.I.A.Nasikwala for the petitioner
Mr.Birendra Saraf i/b M/s.Shaunak Satpute & Co. for the respondents

CORAM:H.L.GOKHALE & A.S.OKA,JJ.
DATE : FEBRUARY 6,2006

P.C.:

1. Heard Mr.Nasikwala in support of this Petition and Mr.Saraf for Respondent no.1. In view of the submission of the first Respondent that they have a claim over Rs.1.1 crores, they have given notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002 (hereinafter referred to as the said Act). The Petitioner has given a reply to the notice on 23rd December 2005. No rejoinder is given to the Petitioner's reply inspite of there being a statutory requirement under Section 13 (3A) of the said Act. The Petitioner is fearing possession from the premises and that is why this Petition is filed.

2. Mr.Nasikwala submitted that the notice dated 26th October 2005 refers to the Security Ordinance and not to the Act. The Ordinance has been repealed under Section 42 of the said Act

and therefore this notice is bad in law. As far as this submission is concerned, Mr.Saraf points out that at the highest it is an error in referring to the Ordinance and not to the Act but in any case, the fact remains that the Petitiones are insisting for rejoinder under Section 13 (3A) of the said Act. He further submitted that without responding to the reply dated 26th December 2005, the measures as contemplated under Section 13(4) will not be resorted.

3. In view of the statement of Mr.Saraf, Mr.Nasikwala states that he has no reason to press this Petition and he may be allowed to withdraw this Petition. Petition is dismissed as withdrawn.

4. Mr.Saraf further makes a statement that after sending rejoinder under section 13 (3A), the first Respondent will resort to the measure and as far as residential flat is concerned and it will take only formal possession and will not take physical possession for a period of four weeks within which time the Petitioner may resort to the remedy available to him under the said Act.

(H.L.GOKHALE,J.)

(ABHAY S.OKA,J.)